IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3601 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NARANJI KESHAJI GELATAR KOLVADA AT THE TUBELWELL OF - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 3 - Respondent(s)

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Appearance :
MR VAIBHAV A VYAS for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
MR M.IQBAL SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/03/2007

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of the learned District Magistrate, Gandhinagar dated 30.10.2006 passed in exercise of powers under Section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (“P.B.M. Act” for short), detaining him.

2.0 The brief facts of the case are that on

22/23.08.2006 surprise checking on the premises of the detenu was carried out by the Authority and at that time the detenu was found to be involved in unauthorized activity of black-marketing of blue kerosene. Thereafter, the detenu came to be detained by the Authority vide impugned order. Hence, the present petition.

3.0 The detenu has challenged the order of detention on various Counts. However, learned Advocate for the detenu, has restricted his arguments to the aspect of delay in passing the order of detention, only. He has submitted that the order of detention passed by the Authority is bad in law in as much as the surprise checking was carried out by the Authority on 22/23.08.2006 whereas the order of detention was passed by the Authority on 30.10.2006 i.e. after a period of about two months which is not explained by the Authority. He has further submitted that the detaining Authority has not taken into consideration the provisions and objects of the Act while passing the impugned order, and hence,

in view of the unexplained delay of about three months, order of detention deserves to be quashed and set aside.

4.0 On the contrary, learned A.G.P. has supported the order of detention on behalf of the detaining Authority and the State Government and Mr. Shaikh, learned Counsel for the Central Government has supported the order of detention on behalf of the Union of India.

5.0 Heard. Considering rival side contentions the only question that needs to be addressed by this Court is as to whether there was delay in passing the order of detention or not. The detaining Authority before passing the order of detention, must satisfy subjectively that if detenu is not detained, he is likely to continue in indulging in similar types of activities in future.

6.0 In the case on hand surprise checking was

carried out by the Authority on 22/23.08.2006 whereas the order of detention was passed on 30.10.2006 i.e. there is a delay of about two months which has not been explained by the detaining Authority while passing the order of detention. It may be noted that during the intervening period i.e. from 22/23.08.2006 to 30.10.2006 no offence has been registered against the detenu. Hence, the subjective satisfaction arrived at by the detaining Authority that the detenu was likely to continue to indulge in the similar types of activities is vitiated on account of absence of any livelink of time between the alleged offence and the order of detention. Thus, the order of detention passed by the detaining Authority deserves to be quashed and set aside.

7.0 In view of the above discussion the petition is allowed. The impugned order of detention passed by the learned District Magistrate, Gandhinagar dated 30.10.2006 is hereby quashed and set aside. The detenu is

ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute with no order as to costs.

(K.S. Jhaveri,J.)

Umesh/